

## **TENTATIVE RULINGS for CIVIL LAW and MOTION**

### **January 25, 2010**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

#### **TENTATIVE RULING**

**Case:**                      **Estate of Garla Quarnberg**  
                                 **Case No. CV PB 08-148**

**Hearing Date:**        **January 25, 2010**                      **Department Fifteen**                      **9:00 a.m.**

The Court consider the late-filed opposition papers so that the motions at bar and the oppositions thereto may be considered on their merits.

**Kristan Hill-Love's motion to reconsider the denial of sanctions in the December 1, 2009, order:** Mrs. Hill-Love moves for reconsideration of that portion of the December 1, 2009, order denying her request for monetary sanctions. Mrs. Hill-Love contends that the Court did not consider the supporting memorandum of points and authorities she filed on November 20, 2009. This motion is **DENIED**. None of the authorities Mrs. Hill-Love cited in support of her request for sanctions authorizes an award of monetary sanctions in favor of Mrs. Hill-Love. Code of Civil Procedure section 2023.010 defines "misuses of the discovery process". This statute does not authorize an award of monetary sanctions. Code of Civil Procedure section 2023.030 provides that to the extent authorized by the chapter governing any particular discovery method, the court may sanction anyone engaging in a misuse of the discovery process. Section 2023.030 in of itself does not authorize an award of sanctions. Mrs. Hill-Love's motion to exclude the trial testimony of Gavin Hill's pharmacology expert was made pursuant to Code of Civil Procedure section 2034.300. That statute also does not authorize an award of monetary sanctions. Finally, *Sherman v. Kinetic Concepts, Inc.* (1998) 67 Cal.App.4<sup>th</sup> 1152 is factually distinguishable. *Sherman* does not involve a section 2034.300 motion or the failure to make an expert witness available for deposition. Accordingly, the December 1, 2009, order correctly found that Mrs. Hill-Love had failed to cite a statute authorizing monetary sanctions in the circumstances before the Court.

**Kristan Hill-Love's motion to reconsider the December 1, 2009, order based on the Court's failure to address the request for sanctions under Code of Civil Procedure section 2024.050:** The December 1, 2009, order does not address Kristan Hill-Love's request for monetary sanctions under Code of Civil Procedure sections 2023.010 and 2024.050, subdivision (c). The Court considers and **DENIES** such request. Code of Civil Procedure sections 2023.010 does not authorize an award of monetary sanctions. Code of Civil Procedure

section 2024.050, subdivision (a) authorizes the Court, upon motion of a party, to grant leave to complete discovery proceedings or to reopen discovery after a new trial date has been set. Gavin Hill asked the Court to order that discovery remain open (1) to allow Mrs. Hill-Love to take James Peroutka's deposition, and (2) to allow Mr. Hill to continue to investigate bank accounts to which Mrs. Hill-Love has/had access and to which transfers of money occurred. The Court excluded Mr. Peroutka's testimony at trial. Mrs. Hill-Love did not move for an order to take Mr. Peroutka's deposition. Therefore, there was no need to keep discovery open to depose Mr. Peroutka. The Court denied Mr. Hill's motion to compel Mrs. Hill-Love to produce further bank records. Accordingly, the Court effectively denied Mr. Hill's request to keep discovery open.

Code of Civil Procedure section 2024.050, subdivision (c) provides that the court shall impose a monetary sanction against any party or attorney who unsuccessfully makes a motion to extend or to reopen discovery, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. At the time Mr. Hill brought his motion, Mrs. Hill-Love had not verified under penalty of perjury that she had produced all bank records requested. Therefore, the Court cannot conclude that Mr. Hill brought his motion without substantial justification.

**Gavin Hill's request for monetary sanctions under Code of Civil Procedure section 1008, subdivision (d):** This request is **DENIED**. A court's failure to consider a timely-filed memorandum of points and authorities constitutes new circumstances authorizing the trial court to grant reconsideration under Code of Civil Procedure section 1008. (*Johnston v. Corrigan* (2005) 127 Cal.App.4th 553, 556.)

**Kristan Hill-Love's motion for sanctions against attorney Robert Kitay for violating court orders:** The request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

The request for sanctions based on the failure to submit a declaration concerning an inventory list is **DENIED**. Mr. Kitay swears under penalty of perjury that the requested inventory list did not exist.

The request for sanctions based on the failure to submit James Blanco's expert report is **DENIED**. Mrs. Hill-Love has not established that the Court ordered Mr. Hill or his handwriting expert to prepare a written report. Paragraph 16 of the Court's September 2, 2009, order does not require the preparation of a report. This order only requires that any written reports be provided to all parties. Similarly, even if it was not superseded by the Court's September 29, 2009, order, paragraph 1 of the September 11, 2009, order does not state that Mr. Hill was required to prepare a report.

The request for sanctions based on the allegation that Mr. Kitay had possession of the original will is **DENIED**. The Court has reviewed the cover letter the Court received on November 23, 2009, and finds that Mrs. Hill-Love has not established that Mr. Kitay had possession of the original will.

Finally, Mrs. Hill-Love moves for sanctions against Mr. Kitay for the failure to provide the chain-of-custody declaration required under paragraph 17 of the September 2, 2009, order. Mr. Hill did not oppose this portion of the motion for sanctions and does not deny that he failed to comply with Paragraph 17 of the September 2 order. There has been no showing of good cause or substantial justification for Mr. Hill's failure to comply with the Court's order. Mr. Hill and his counsel Robert Kitay shall provide David Springfield with the chain-of-custody declaration described in the September 2, 2009, order **by no later than February 1, 2010**. If Mr. Hill and Mr. Kitay do not timely comply with this order, Mrs. Hill-Love shall notify the Court in writing, with a copy to Mr. Kitay, and the Court will issue an order imposing money sanctions in the amount of \$1,000.00 against Mr. Hill and Mr. Kitay, severally and jointly, payable to the court. (Code Civ. Proc., § 177.5.)